

# EXHIBIT C

COPY

1 JOHN BLIM (*PRO HAC VICE* pending)  
 2 JAY EDELSON (*PRO HAC VICE* pending)  
 3 MYLES MCGUIRE (Of Counsel) (*PRO HAC VICE* pending)  
 4 BLIM & EDELSON, LLC  
 5 53 West Jackson Boulevard  
 Suite 1642  
 6 Chicago, Illinois 60604  
 Telephone: (312) 913-9400  
 7 Facsimile: (312) 913-9401

8 JOHN G. JACOBS (*PRO HAC VICE* pending)  
 9 BRYAN G. KOLTON (*PRO HAC VICE* pending)  
 10 THE JACOBS LAW FIRM, CHTD.  
 11 122 South Michigan Avenue  
 Suite 1850  
 12 Chicago, Illinois 60603  
 Telephone: (312) 427-4000  
 13 Facsimile: (312) 427-1850

14 TERRY M. GORDON - SEN 75604  
 15 LAW OFFICES OF TERRY M. GORDON  
 16 Three Harbor Drive, Suite 317  
 17 Sausalito, California 94965  
 Telephone: (415) 331-3601  
 18 Facsimile: (415) 331-1225

19 ATTORNEYS FOR PLAINTIFFS

20 IN THE UNITED STATES DISTRICT COURT  
 21 NORTHERN DISTRICT OF CALIFORNIA

22 RUSSELL BRADBERRY, individually and  
 23 on-behalf of a class of similarly situated  
 24 individuals,

25 Plaintiff,

26 v.

27 T-MOBILE USA, INC., a Delaware  
 28 corporation

Defendant.

Case No.

COMPLAINT FOR DAMAGES  
 AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

CLASS ACTION

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

ORIGINAL  
 FILED  
 05 OCT 20 PM 12:25  
 U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

EDL

C 06 8567

### CLASS ACTION COMPLAINT

Plaintiff Russell Bradberry ("Bradberry"), on behalf of himself a class and sub-class of similarly situated individuals, brings this class action against T-Mobile USA, Inc. ("T-Mobile") seeking to stop T-Mobile's unlawful practice of "recycling" "dirty" cellular telephone numbers, which practice has resulted in unauthorized charges to customers' accounts, and to obtain redress for all persons injured by T-Mobile's conduct. Plaintiff, for his class action complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

### NATURE OF THE CASE

1. In a widespread industry practice little known by those outside the industry, T-Mobile routinely "recycles" so-called "dirty" telephone numbers to its customers when they sign up for new cellular telephone service. The numbers are "recycled" in that they were previously owned and/or used by other persons or entities. The numbers are "dirty" in that they are encumbered with pre-existing billing obligations for products and services authorized to be purchased, if at all, by the previous owners and/or users of those numbers.

2. T-Mobile's practice of re-issuing "dirty" phone numbers has resulted in unauthorized charges being placed on unsuspecting customers' telephone bills, in an illegal practice known as "cramming." For years, T-Mobile has systematically, repeatedly and without authorization, placed charges on customers' monthly bills for third-party services (such as ring tones, joke-a-day programs, wallpaper, screensavers and other forms of software provided by third-party vendors) that were never authorized to be purchased by the current owners of the affected phone numbers, (a) in violation of federal statute; (b) in breach of contract and the duty of good faith and fair dealing, (c) in violation of California Public Utilities Code section 2890 and California Public Utilities Commission Revised

1 General Order 168, and (d) in violation of California Business and Professions Code  
2 sections 17200 and 17500 consumer fraud provisions.

3 3. Because of T-Mobile's wrongful actions, Plaintiff seeks on behalf of himself  
4 and the class members, money damages, injunctive and declaratory relief, costs, and  
5 reasonable attorneys' fees.

6  
7 **PARTIES**

8 4. Plaintiff Russell Bradberry is a citizen of California.

9 5. Defendant T-Mobile USA, Inc. ("T-Mobile") is a leading provider of cellular  
10 telephone service in the United States. T-Mobile is a Delaware corporation with its principal  
11 place of business in the State of New York. T-Mobile does business throughout the United  
12 States, including the State of California and this judicial district.

13  
14 **JURISDICTION**

15 6. The Court has original jurisdiction over this action pursuant to 28 U.S.C. §  
16 1331. It also has jurisdiction under section 1332(d), because (a) at least one member of the  
17 putative class is a citizen of a state different from Defendant, (b) the amount in controversy  
18 exceeds \$5,000,000, exclusive of interests and costs, and (c) none of the exceptions under  
19 that subsection applies to the instant action. This Court has supplemental jurisdiction over  
20 the remaining counts under 28 U.S.C. § 1367.

21  
22 **VENUE**

23 7. Venue is proper in this district under 28 U.S.C. §§ 1391 (b) and (c).

24 ///  
25 ///  
26 ///  
27  
28 **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

**THE FACTS RELATING TO THE NAMED PLAINTIFF**

8. On November 2, 2005, Plaintiff visited the store of an authorized T-Mobile sales representative located in Visalia, California to purchase new cell phone service for his personal use.

9. On that same day, in exchange for a T-Mobile cell phone plan of 600 "anytime" minutes, Plaintiff agreed to pay T-Mobile \$39.99 each month for a period of 12 months. (A copy of T-Mobile's Service Agreement with Plaintiff is attached hereto as Exhibit A.)

10. Upon execution of his Service Agreement and activation of his cellular telephone account, T-Mobile provided Plaintiff a cellular phone number or "GSM #" (that is, a Global System for Mobile Communications number) of "uno+6194468694."

11. Unbeknownst to Plaintiff, T-Mobile provided him with a recycled "dirty" phone number -- one saddled with preexisting obligations, encumbrances and billing arrangements for products and services authorized to be purchased, if at all, by the previous owner(s) and/or user(s) of that number.

12. Thus, beginning on or about November 2, 2005 -- the same day Plaintiff obtained his cell phone number and started receiving service from T-Mobile -- and continuing through at least April 28, 2006, Plaintiff's cell phone received multiple unwanted "premium" text message calls on a near daily basis from a company called Cellfish Media, LLC, f/d/b/a Lagardere Active North America, Inc. ("Cellfish"), a third-party seller of cellular ringtone products and services. "Premium" text messages are apparently those that include various forms of software, such as ringtones.

13. Throughout the relevant period, Plaintiff received hundreds of such messages.

14. At no time did Plaintiff authorize the purchase of said products and services offered by Cellfish and at no time did Plaintiff consent to Cellfish's sending of text messages to his telephone number.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

1           15. Throughout the relevant time period, T-Mobile billed Plaintiff for "premium"  
2 text messaging charges of \$0.50 for each incoming "premium" text message, in addition to  
3 its standard charge of \$0.05 per each incoming text message.

4           16. At no time did Plaintiff authorize T-Mobile to bill him for said charges.

5           17. In or about early 2006, Plaintiff contacted T-Mobile to inquire why his bills  
6 were so high and was told that it was because of the premium text message calls he received  
7 from Cellfish. Plaintiff advised T-Mobile that he did not authorize the purchase of said  
8 products and services offered by Cellfish and that at no time did he consent to Cellfish's  
9 sending of any text messages to his telephone number. Plaintiff then asked T-Mobile how he  
10 could stop being sent these unauthorized messages from Cellfish for which he was being  
11 charged by T-Mobile.

12           18. T-Mobile never offered to remove the unauthorized charges from Plaintiff's  
13 bill, never undertook to resolve the dispute to Plaintiff's satisfaction, never verified that  
14 Plaintiff had, in fact, provided authorization to purchase products and services offered by  
15 Cellfish, never verified whether Plaintiff had, in fact, provided consent to Cellfish's sending  
16 of any text messages to his telephone number, and never verified that Plaintiff had, in fact,  
17 provided authorization to bill his account for said charges. Rather, T-Mobile simply "passed  
18 the buck," advising Plaintiff to contact Cellfish.

19           19. On multiple occasions thereafter, Plaintiff attempted to contact Cellfish, but  
20 was unable to speak directly with anyone at the company and instead was forced to leave  
21 voice mail messages, which Cellfish failed to return.

22           20. Plaintiff visited Cellfish's website ([www.texttoy.com](http://www.texttoy.com)) and was informed that  
23 to stop receiving text messages from Cellfish he would need to reply to one of its messages  
24 with the word "STOP." Plaintiff followed those instructions, but instead of stopping the  
25 unwanted messages, he began to receive even more such messages.

1           21. Having not heard from Cellfish and having had no success in stopping the  
2 messages, Plaintiff once again contacted T-Mobile. In response, T-Mobile did nothing.

3           22. Plaintiff, through his counsel, was finally able to contact Cellfish, through its  
4 Director of Legal & Business Affairs, Lisa M. Weissberg. On May 11, 2006, Ms. Weissberg  
5 provided Plaintiff's counsel what she described as "the initial, voluntary sign up by your  
6 client for this service as of July 13, 2005. The messages received are not spam," Ms.  
7 Weissberg claimed, "but messages related to the service that, according to the terms of use of  
8 the service agreed to by your client, are being sent."

9           23. The purported authorization to be billed for such charges was obtained from  
10 an unidentified person with the same "GSM #" eventually assigned by T-Mobile to Plaintiff  
11 ("tmo+6194468694"); however, the authorization for the subject charges was obtained on  
12 July 13, 2005 – a date *more than three months prior* to the time that Plaintiff signed his  
13 Service Agreement with T-Mobile, obtained that same cell phone number from T-Mobile, or  
14 started receiving T-Mobile service.

15           24. Plaintiff could not possibly have authorized the charges for which he was  
16 being billed. He did not have any account with T-Mobile at that time. Indeed, from May  
17 2005 until October 2005, Plaintiff was out of the country in the Persian Gulf serving in the  
18 United States Navy aboard the U.S.S. Nimitz, without access to a working cellular phone.

19  
20           **ADDITIONAL ALLEGATIONS APPLICABLE TO ALL COUNTS**

21           25. T-Mobile is a telephone corporation and public utility as defined in California  
22 Pub. Util. Code sections 216 and 234 and is certified by the California Public Utilities  
23 Commission ("CPUC") to offer, and does in fact offer and sell, mobile cellular  
24 telecommunication services throughout the State of California.

25           26. T-Mobile uses uniform form contracts ("Service Agreements") under which  
26 customers purchase cell phone services.

1 27. T-Mobile's services include providing access to and billing for various third-  
2 party services such as ring tones, joke-a-day programs, wallpaper, screensavers and other  
3 forms of software provided by numerous third-party vendors with names such as Jamster, M  
4 Qube, Cellfish Media LLC (f/k/a Lagardere Active North America, Inc.), and many others.

5 28. T-Mobile allows such third-party services to be billed directly on a customer's  
6 monthly wireless bill.

7 29. Envisioning the potential for abuse, the California Legislature adopted  
8 California Public Utilities Code section 2890 which provides, in relevant part, that: "(a) A  
9 telephone bill may only contain charges for products or services, the purchase of which the  
10 subscriber has authorized."

11 30. Public Utilities Code section 2890 was intended to deter the unlawful practice  
12 of "cramming," i.e., the placing of unauthorized charges on telephone bills, as defined in the  
13 Legislative History of Public Utilities Code sections 2889.9 and 2890:

14 ["This bill addresses the problem of 'cramming,' a practice in  
15 which consumers are charged for unauthorized services in their  
16 phone bills. [¶] ... [¶] A relatively new, and growing, scam on  
17 telephone customers is the imposition of charges on the  
18 telephone bill for products or services the customer has not  
19 bought.... [¶] Often the charges which are 'crammed' on the  
20 customer's bill are relatively small, less than \$10, and  
21 inconspicuously labeled. If one does not carefully scrutinize  
22 the telephone bill, the crammed charge could easily be  
23 overlooked."]; Sen. Bill No. 378, approved by Governor, Sept.  
30, 1998 (Amend. Aug. 21, 1998) (1997 1998 Reg. Sess.) ["  
24 'Cramming' charges are usually comprised of services such as  
25 unauthorized voice mail options, Internet access options,  
26 calling cards, paging services, and 800 numbers. In many  
27 cases[,] these unauthorized charges are initiated from  
28 sweepstakes, raffles, and telemarketers of unknown and  
unscrupulous companies."].)

Assem. Bill No. 2142, 3d reading May 7, 1998, Assem. Floor (1997 1998 Reg. Sess.).

31. According to the CPUC, "the practice of cramming has become a serious and  
widespread problem in California, draining time and money from California consumers and  
businesses."



1           32. Revised General Order 168, "Market Rules to Empower Telecommunications  
2 Consumers and to Prevent Fraud" similarly provides that "Telephone companies may bill  
3 subscribers only for authorized charges."

4           33. Further, the duty of good faith and fair dealing, a part of every contract,  
5 requires that T-Mobile not bill any customer for any good or service not authorized by the  
6 customer.

7           34. Upon execution of said Service Agreements and activation of cellular  
8 telephone accounts, T-Mobile provides its customers a ten-digit cellular telephone number.

9           35. Unbeknownst to its customers, T-Mobile often "recycles" "dirty" telephone  
10 numbers, numbers that they were previously owned and/or used by other persons or entities  
11 and encumbered with pre-existing billing obligations for products and services authorized to  
12 be purchased, if at all, by the previous owners and/or users of said numbers.

13           36. T-Mobile has no effective system, policy, or procedure in place for ensuring  
14 that the ten-digit cellular phone numbers it provides customers have been properly  
15 "screened" and scrubbed "clean" so as to ensure that its customers are not adversely affected  
16 by the actions, inactions, obligations and/or encumbrances of previous owners and/or users of  
17 the telephone numbers.

18           37. As a result, T-Mobile has for years been systematically, repeatedly and  
19 without authorization, billing its customers for products and services not authorized to be  
20 purchased by those customers. Indeed, if such purchases were authorized at all, they were  
21 authorized by previous owners and/or users of such telephone numbers. T-Mobile and third-  
22 party service providers have, on information and belief, profited greatly from this practice.

23           38. T-Mobile's unlawful charging is further exacerbated by its failure to strictly  
24 comply with various disclosure-related requirements of Public Utilities Code section 2890,  
25 making it more difficult for customers to discover the unauthorized charges, realize what  
26 their options are, and thereafter dispute said charges.

1 39. Public Utilities Code section 2890(d) provides, in relevant part, as follows:

2 (d) (1) A billing telephone company shall clearly identify, and  
3 use a separate billing section for, each person, corporation, or  
4 billing agent that generates a charge on a subscriber's telephone  
5 bill. A billing telephone company may not bill for a person,  
6 corporation, or billing agent, unless that person, corporation or  
7 billing agent complies with paragraph (2).

8 (2) Any person, corporation, or billing agent that charges  
9 subscribers for products or services on a telephone bill shall do  
10 all of the following:

11 (A) Include, or cause to be included, in the telephone  
12 bill the amount being charged for each product or service,  
13 including any taxes or surcharges, and a clear and concise  
14 description of the service, product, or other offering for which  
15 a charge has been imposed.

16 (B) Include, or cause to be included, for each entity that  
17 charges for a product or service, information with regard to  
18 how to resolve any dispute about that charge, including the  
19 name of the party responsible for generating the charge and a  
20 toll free telephone number or other no cost means of contacting  
21 the entity responsible for resolving disputes regarding the  
22 charge and a description of the manner in which a dispute  
23 regarding the charge may be addressed. Each telephone bill  
24 shall include the appropriate telephone number of the  
25 commission that a subscriber may use to register a complaint.

26 40. Although required to do so, the bills issued by T-Mobile systematically failed  
27 to include information with regard to how to disputes specific charges, failed to include the  
28 name of the party responsible for generating the charge, failed to include a toll-free telephone  
number or other no-cost means of contacting the entity responsible for resolving disputes  
regarding the charge and a description of the manner in which a dispute regarding the charge  
may be addressed. T-Mobile's bills also systematically failed to "include the appropriate  
telephone number of the commission that a subscriber may use to register a complaint," as  
required by section 2890(d) (2) (b).

41. According to the CPUC, "[t]he obvious purpose of including the  
Commission's contact information is to safeguard consumers' Rights to Public Participation  
and Enforcement (consumers have a right to be informed of their rights and what agency

1 enforces those rights) and Accurate Bills and Redress (consumers have a right to fair, prompt  
2 and courteous redress for problems they encounter). Without this information, many or most  
3 consumers won't realize what their options are."

4 42. Public Utilities Code section 2890(e) further requires that "[i]f an entity  
5 responsible for generating a charge on a telephone bill receives a complaint from a subscriber  
6 that the subscriber did not authorize the purchase of the product or service associated with  
7 that charge, the entity, not later than 30 days from the date on which the complaint is  
8 received, shall verify the subscriber's authorization of that charge or undertake to resolve the  
9 billing dispute to the subscriber's satisfaction." T-Mobile systematically failed to adhere to  
10 these "cramming" rules in its treatment of Plaintiff and other affected customers.

11 43. Pursuant to Public Utilities Code section 2890(d)(2)(D), "[I]f there is a  
12 dispute, there is a rebuttable presumption that an unverified charge for a product or service  
13 was not authorized by the subscriber and that the subscriber is not responsible for that  
14 charge." Plaintiff and the Class dispute said charges and, thus, are entitled to a presumption  
15 that said charges were unauthorized.

#### 16 17 CLASS ALLEGATIONS

18 44. Plaintiff brings this action, pursuant to Federal Rule of Civil Procedure  
19 23(b)(2) and (b)(3), on behalf of himself and a class consisting of all T-Mobile wireless  
20 telephone subscribers who received a telephone number from T-Mobile and suffered losses  
21 or damages as a result of T-Mobile's billing for products and services not authorized by the  
22 new owner of the number (the "Plaintiff Class" or "Class"), but, rather, if at all, by a prior  
23 owner or user of the number; provided, however, that the following are excluded from this  
24 proposed Class: (i) defendant, and (ii) any relative or employee of defendant.

1           45.     Additionally, Plaintiff brings this action on behalf of a state-wide sub-class  
2     (the "Sub-Class") consisting of all members of the Class who entered into subscription  
3     contracts within the state of California.

4           46.     The Class and Sub-Class each consist of thousands of individuals and other  
5     entities, making joinder impractical, in satisfaction of Rule 23(a)(1).

6           47.     The claims of Plaintiff are typical of the claims of all of the other members of  
7     the respective classes.

8           48.     Plaintiff will fairly and adequately represent and protect the interests of the  
9     other members of the respective classes. Plaintiff has retained counsel with substantial  
10    experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are  
11    committed to vigorously prosecuting this action on behalf of the other Class members, and  
12    have the financial resources to do so. Neither Plaintiff nor his counsel have any interest  
13    adverse to those of the other Class members.

14          49.     Absent a class action, most Class members would find the cost of litigating  
15    their claims to be prohibitive, and will have no effective remedy. The class treatment of  
16    common questions of law and fact is also superior to multiple individual actions or piecemeal  
17    litigation in that it conserves the resources of the courts and the litigants, and promotes  
18    consistency and efficiency of adjudication.

19          50.     Defendant has acted and failed to act on grounds generally applicable to the  
20    plaintiff and the other members of the respective classes, requiring the Court's imposition of  
21    uniform relief to ensure compatible standards of conduct toward the Class members.

22          51.     The factual and legal bases of Defendant's liability to Plaintiff and to the other  
23    members of the respective classes are the same, resulting in injury to the plaintiff and to all of  
24    the other Class members. Plaintiff and other Class members have all suffered harm and  
25    damages as a result of all of Defendant's unlawful and wrongful conduct.

1 52. There are many questions of law and fact common to the claims of Plaintiff  
2 and the other members of the respective class members, and those questions predominate  
3 over any questions that may affect individual Class members within the meaning of Rule  
4 23(a)(2) and 23(b)(3). Common questions for the Class include but are not limited to the  
5 following:

6 (a) Whether Defendant's conduct described herein is "unjust and  
7 unreasonable" as specified in 47 U.S.C. § 201(b); and

8 (b) Whether Defendant's conduct described herein is in breach of contract.

9 53. Common questions for the Sub-Class include:

10 (a) Whether Defendant's conduct described herein is in violation of  
11 California's Public Utility Code section 2890;

12 (b) Whether Defendant's conduct described herein violates California  
13 Business and Professions Code sections 17200, *et seq*; and

14 (c) Whether Defendant's conduct described herein violates California  
15 Business and Professions Code sections 17500, *et seq*.

16  
17 **COUNT I**

18 **(Violation Of 47 U.S.C. § 201 on behalf of the Class)**

19 54. Plaintiff incorporates the foregoing allegations.

20 55. Section 201 of 47 U.S. Code provides in relevant part as follows:

21 All charges, practices, classifications, and regulations for and  
22 in connection with such communication service [*i.e.*, interstate  
23 or foreign communication by wire or radio], shall be just and  
24 reasonable, and any such charge, practice, classification, or  
25 regulation that is unjust or unreasonable is declared to be  
26 unlawful . . .

27 56. T-Mobile's practice of charging Plaintiff and class members for services they  
28 never ordered or subscribed to is neither just nor reasonable and is in fact unjust and  
unreasonable, as set forth in 47 U.S.C. § 201, and violates the said statute.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

1 57. 47 U.S.C. § 206, in turn, provides in relevant part:

2 In case any common carrier shall do, or cause or permit to be  
3 done, any act, matter, or thing in this chapter prohibited or  
4 declared to be unlawful . . . such common carrier shall be liable  
5 to the person or persons injured thereby for the full amount of  
6 damages sustained in consequence of any such violation of the  
7 provisions of this chapter, together with a reasonable counsel  
8 or attorney's fee . . . .

9 58. Finally, 47 U.S. C. § 207 provides in relevant part that

10 Any person claiming to be damaged by any common carrier  
11 subject to the provisions of this chapter may . . . bring suit for  
12 the recovery of the damages for which such common carrier  
13 may be liable under the provisions of this chapter, in any  
14 district court of the United States of competent jurisdiction . . .

## 15 COUNT II

### 16 (Unauthorized Telephone Charges In Violation Of 17 California Public Utilities Code § 2890 on behalf of the Sub-Class)

18 59. Plaintiff incorporates by reference the foregoing allegations.

19 60. California Public Utilities Code section 2106 provides aggrieved persons the  
20 following private right of action:

21 Any public utility which does, causes to be done, or permits  
22 any act, matter, or thing prohibited or declared unlawful, or  
23 which omits to do any act, matter, or thing required to be done,  
24 either by the Constitution, any law of this State, or any order or  
25 decision of the commission, shall be liable to the persons or  
26 corporations affected thereby for all loss, damages, or injury  
27 caused thereby or resulting therefrom. If the court finds that  
28 the act or omission was willful, it may, in addition to the actual  
damages, award exemplary damages. An action to recover for  
such loss, damage, or injury maybe brought in any court of  
competent jurisdiction by any corporation or person.

61. In an effort to deter the unlawful practice of "cramming," i.e., the placing of  
unauthorized charges on telephone bills, the California legislature enacted Public Utilities  
Code section 2890, which provides, in pertinent part, as follows:

(a) A telephone bill may only contain charges for  
products or services, the purchase of which the subscriber has  
authorized.



1 (b) When a person or corporation obtains a written  
2 order for a product or service, the written order shall be a  
3 separate document from any solicitation material. The sole  
4 purpose of the document is to explain the nature and extent of  
5 the transaction. Written orders and written solicitation  
6 materials shall be unambiguous, legible, and in a minimum 10  
7 point type. Written or oral solicitation materials used to obtain  
8 an order for a product or service shall be in the same language  
9 as the written order. Written orders may not be used as entry  
10 forms for sweepstakes, contests, or any other program that  
11 offers prizes or gifts.

12 (c) The commission may only permit a subscriber's  
13 local telephone service to be disconnected for nonpayment of  
14 charges relating to the subscriber's basic local exchange  
15 telephone service, long distance telephone service within a  
16 local access and transport area (intraLATA), long distance  
17 telephone service between local access and transport areas  
18 (interLATA), and international telephone service.

19 (d) (1) A billing telephone company shall clearly  
20 identify, and use a separate billing section for, each  
21 person, corporation, or billing agent that generates a  
22 charge on a subscriber's telephone bill. A billing  
23 telephone company may not bill for a person,  
24 corporation, or billing agent, unless that person,  
25 corporation or billing agent complies with paragraph  
26 (2).

27 (2) Any person, corporation, or billing agent that  
28 charges subscribers for products or services on a  
telephone bill shall do all of the following:

(A) Include, or cause to be included, in the  
telephone bill the amount being charged for each  
product or service, including any taxes or surcharges,  
and a clear and concise description of the service,  
product, or other offering for which a charge has been  
imposed.

(B) Include, or cause to be included, for each  
entity that charges for a product or service, information  
with regard to how to resolve any dispute about that  
charge, including the name of the party responsible for  
generating the charge and a toll free telephone number  
or other no cost means of contacting the entity  
responsible for resolving disputes regarding the charge  
and a description of the manner in which a dispute  
regarding the charge may be addressed. Each telephone  
bill shall include the appropriate telephone number of  
the commission that a subscriber may use to register a  
complaint.

1 (C) Establish, maintain, and staff a toll free  
2 telephone number to respond to questions or disputes  
3 about its charges and to provide the appropriate  
4 addresses to which written questions or complaints may  
5 be sent. The person, corporation, or billing agent that  
6 generates a charge may also contract with a third-party,  
7 including, but not limited to, the billing telephone  
8 corporation, to provide that service on behalf of the  
9 person, corporation or billing agent.

10 (D) Provide a means for expeditiously resolving  
11 subscriber disputes over charges for a product or  
12 service, the purchase of which was not authorized by  
13 the subscriber. In the case of a dispute, there is a  
14 rebuttable presumption that an unverified charge for a  
15 product or service was not authorized by the subscriber  
16 and that the subscriber is not responsible for that  
17 charge. With regard to direct dialed  
18 telecommunications services, evidence that a call was  
19 dialed is prima facie evidence of authorization. If  
20 recurring charges arise from the use of those subscriber  
21 initiated services, the recurring charges are subject to  
22 this section.

23 (E) If an entity responsible for generating a  
24 charge on a telephone bill receives a complaint from a  
25 subscriber that the subscriber did not authorize the  
26 purchase of the product or service associated with that  
27 charge, the entity, not later than 30 days from the date  
28 on which the complaint is received, shall verify the  
subscriber's authorization of that charge or undertake to  
resolve the billing dispute to the subscriber's  
satisfaction.

62. Defendant violated section 2890 by virtue of its conduct alleged above,  
including its billing for products or services, the purchase of which he never authorized,  
thereby causing Plaintiff and the members of the class to suffer loss, damage, and injury.

63. Plaintiff and the Class are entitled to actual damages pursuant to Public  
Utilities Code section 2106. Plaintiff and the Sub-Class are further entitled to exemplary  
damages to the extent the evidence shows that Defendant's violations were willful.

///

///

///

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF



**COUNT III**  
**(Breach Of Contract on behalf of the Class)**

64. Plaintiff incorporates by reference the foregoing allegations.

65. Plaintiff entered into an agreement with Defendant whereby Plaintiff agreed to pay a certain sum of money in exchange for Defendant's activation of Plaintiff's cellular telephone account and its promise to provide various communication and related services to Plaintiff.

66. Defendant expressly and/or impliedly agreed to provide Plaintiff with a cellular telephone number free of preexisting billing obligations for products and services ordered, purchased and/or authorized by the previous owners and/or users of said telephone numbers.

67. Defendant further expressly and/or impliedly agreed to bill Plaintiff only for products or services the purchase of which he had authorized.

68. Defendant further expressly and/or impliedly agreed to carry out its obligations in good faith and fair dealing.

69. Defendant breached its contractual obligations by providing Plaintiff with a phone number saddled with preexisting obligations, encumbrances and billing arrangements for products and services ordered, purchased and/or authorized, if at all, by the previous owners and/or users of said telephone numbers.

70. Defendant further breached its contractual obligations, including its contractual obligation of good faith and fair dealing, by thereafter billing Plaintiff for products or services, the purchase of which he never authorized.

71. Plaintiff has performed his obligations under the contract.

72. The aforementioned breaches of contract have proximately caused the Plaintiff economic injury and other damages.

///

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

**COUNT IV**

**(Unlawful, Unfair and Deceptive Business Practices in Violation of California Business & Professions Code § 17200, et seq. on behalf of the Sub-Class)**

73. Plaintiff incorporates by reference the foregoing allegations.

74. The Unfair Business Practices Act proscribes unfair business competition and defines same to include any "unfair," "unlawful," or "fraudulent" business act or practice. California Business & Professions Code §17200 *et seq.*

75. Defendant violated, and continues to violate this proscription through its conduct alleged above, including its unlawful violations of the California Public Utilities Code section 2890, as set forth above in connection with Plaintiff's First Cause of Action.

76. Defendant, through its acts of unfair competition, has obtained money from Plaintiff and members of the proposed Class. Plaintiff and the members of the Sub-Class ask that this Court restore this money to them and enjoin Defendant from continuing its illegal practices.

77. Such conduct is ongoing and continues to this date. Plaintiff, the Sub-Class members and the general public are therefore entitled to the relief described herein.

**COUNT V**

**(False and Misleading Advertising in Violation of California Business & Professions Code § 17500, et seq. on behalf of the Sub-Class)**

78. Plaintiff incorporates by reference the foregoing allegations.

79. California Business & Professions Code § 17500 provides that:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with

1 the proposed performance or disposition thereof, which is  
2 untrue or misleading, and which is known, or which by the  
3 exercise of reasonable care should be known, to be untrue or  
4 misleading, or for any such person, firm, or corporation to so  
5 make or disseminate or cause to be so made or disseminated  
6 any such statement as part of a plan or scheme with the intent  
7 not to sell such personal property or services, professional or  
8 otherwise, so advertised at the price stated therein, or as so  
9 advertised.

10 80. Defendant violated, and continues to violate this provision by virtue of its  
11 conduct alleged above.

12 81. Defendant, through its acts of unfair competition, has obtained money from  
13 Plaintiff and members of the Sub-Class. Plaintiff and the members of the Sub-Class ask that  
14 this Court restore this money to them and enjoin Defendant from continuing its illegal  
15 practices.

16 82. Such conduct is ongoing and continues to this date. Plaintiff, the Sub-Class  
17 members and the general public are therefore entitled to the relief described herein.

#### 18 PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff Russell Bradberry, on behalf of himself and the respective  
20 classes, prays for the following relief:

21 a) Certify this case as a class action on behalf of the Class and  
22 Sub-Class as defined above and appoint Russell Bradberry Class  
23 Representative, and appoint John G. Jacobs. and Jay Edelson, as co-lead  
24 counsel;

25 b) Declare that the actions of T-Mobile, as set out above,  
26 constitute a breach of contract, and are in violation of 47 U.S.C. § 201,  
27 California Public Utilities Code § 2890 and California Business and  
28 Professions Code §§ 17200 and 17500;

c) Enter judgment against T-Mobile for all economic, monetary,  
actual, consequential, and compensatory damages caused by Defendant's.

1 conduct, and if Defendant's conduct is proved willful, award Plaintiff and the  
2 Class exemplary damages;

3 d) Award Plaintiff and the Classes reasonable costs and attorneys'  
4 fees;

5 e) Award Plaintiff and the Classes pre- and post-judgment  
6 interest;

7 f) Enter judgment for an injunctive and/or declaratory relief as is  
8 necessary to protect the interests of Plaintiff and the Classes;

9 g) Award such other and further relief as equity and justice may  
10 require.

11  
12 **JURY DEMAND**

13 Plaintiff requests trial by jury of all claims that can be so tried.

14  
15 Respectfully submitted,

16 Dated: October 20, 2006

LAW OFFICES OF TERRY M. GORDON

17  
18  
19  
20 By: 

TERRY M. GORDON  
One of the Attorneys for RUSSELL  
BRADBERRY, individually and on  
behalf of a class of similarly situated  
individuals

1 JOHN BLIM (*PRO HAC VICE* pending)  
2 JAY EDELSON (*PRO HAC VICE* pending)  
3 MYLES MCGUIRE (Of Counsel) (*PRO HAC VICE* pending)  
4 BLIM & EDELSON, LLC  
5 53 West Jackson Boulevard  
6 Suite 1642  
7 Chicago, Illinois 60604  
8 Telephone: (312) 913-9400  
9 Facsimile: (312) 913-9401  
10  
11 JOHN G. JACOBS (*PRO HAC VICE* pending)  
12 BRYAN G. KOLTON (*PRO HAC VICE* pending)  
13 THE JACOBS LAW FIRM, CHTD.  
14 122 South Michigan Avenue  
15 Suite 1850  
16 Chicago, Illinois 60603  
17 Telephone: (312) 427-4000  
18 Facsimile: (312) 427-1850  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

T-Mobile

KOD #132420

Off Site Service Agreement

Activation Date 11/02/05 ☒ New ☐ Add-on Store Name Alert Cellular  
 Account # \_\_\_\_\_ Agent Code 1556890 Location Phone 559 733-0472  
 Onyx Code \_\_\_\_\_ Credit Class \_\_\_\_\_  
 Salesperson Name Mary Herrera For Questions, rate plan changes or other functions, visit mt-mobile (at t-mobile.com) or call 611 (from T-Mobile wireless) or (800) 937-8997

Name RUSSELL BRADBERRY Driver's License # & State DZ552154 CA  
 Business Name \_\_\_\_\_ E-Mail \_\_\_\_\_  
 Address 3254 PEPPER GRASS DR Daytime Phone 559 739-7284  
 City, State, ZIP SAN DIEGO CA 92115 Date of Birth 06/13/1982  
 SS# or Federal Tax ID # 570 71 6891 Fax \_\_\_\_\_  
 Password \_\_\_\_\_

LINE 1-A Mobile # 409-446-8694 MINUTES INCLUDED UNLTD W/NO W/NEW  
 Rate Plan 3A Monthly Access Fee \_\_\_\_\_ OVERAGE CHARGES \_\_\_\_\_ 1st MONTH PRORATED CHARGES 39.99  
 SIM# 8901260310031355349 OPTIONAL FEATURES \_\_\_\_\_  
 IMEI# 35055300119385 ☒ Included unltd wls ☒ Added 1st plan 499  
 Manufacturer/Model # OWN PHONE ☒ Included unltd wls ☒ Added \_\_\_\_\_

LINE 2 Mobile # \_\_\_\_\_ MINUTES INCLUDED \_\_\_\_\_  
 Rate Plan \_\_\_\_\_ Monthly Access Fee \_\_\_\_\_ OVERAGE CHARGES \_\_\_\_\_ 1st MONTH PRORATED CHARGES \_\_\_\_\_  
 SIM# \_\_\_\_\_ OPTIONAL FEATURES \_\_\_\_\_  
 IMEI# \_\_\_\_\_ ☐ Included \_\_\_\_\_ ☐ Added \_\_\_\_\_  
 Manufacturer/Model # \_\_\_\_\_ ☐ Included \_\_\_\_\_ ☐ Added \_\_\_\_\_

LINE 3 Mobile # \_\_\_\_\_ MINUTES INCLUDED \_\_\_\_\_  
 Rate Plan \_\_\_\_\_ Monthly Access Fee \_\_\_\_\_ OVERAGE CHARGES \_\_\_\_\_ 1st MONTH PRORATED CHARGES \_\_\_\_\_  
 SIM# \_\_\_\_\_ OPTIONAL FEATURES \_\_\_\_\_  
 IMEI# \_\_\_\_\_ ☐ Included \_\_\_\_\_ ☐ Added \_\_\_\_\_  
 Manufacturer/Model # \_\_\_\_\_ ☐ Included \_\_\_\_\_ ☐ Added \_\_\_\_\_

Smart Access Customers Only:

You have a \$150 spending limit. If your balance exceeds \$150, T-Mobile may suspend your service until you bring the balance below \$100. Even if suspended, you will continue to be liable for all charges incurred. Special Comments: 15.00 non-refundable fee

Security Deposit \_\_\_\_\_ Check/Money order # \_\_\_\_\_ Reference # \_\_\_\_\_  
 Method of Payment: ☐ Cash ☐ Check ☐ Credit Card ☒ Withdrawal From Bank Account ☐ P.O. ☐ Deferred Payment (Business Accounts Only)  
 Credit Card Information: ☐ MC ☒ Visa ☐ AmEx ☐ Other  
 Credit Card # 4060 9500 0017 708 Exp. Date 07/07 Authorization No. 055906  
 Bank Account Information: Routing Transit # \_\_\_\_\_ Account # \_\_\_\_\_

AUTOMATIC PAYMENT FROM CREDIT CARD OR BANK ACCOUNT: Please charge my monthly T-Mobile service fees to my credit card or bank account. By signing, I authorize T-Mobile to debit my account.

Signature \_\_\_\_\_ Date 02 NOV 05

- THIS AGREEMENT INCORPORATES THE T-MOBILE TERMS AND CONDITIONS AND THE FOLLOWING BROCHURES AND MATERIALS: Welcome Guide; Welcome Letter; Rates and Services; Coverage Brochure; Coverage Maps; Regional Plan Brochures; T-Mobile for Business Brochure; International Brochure; Handhelds Brochure; Added Value Brochure and other rate plan materials.
- You have selected a plan with a fixed service term of at least 12 months. Our fixed term plans are subject to a \$200 early cancellation fee per line of service.
- The monthly access fee and included minutes, if any, will be prorated for the number of days you are actually on service with T-Mobile for your first month.
- There will be a one time \$35.00 activation fee per line of service. A Regulatory Programs fee of \$66 per line/month applies.
- Cancellation and Return Policy. You may cancel your service within 14 days of your service activation date (30 days in CA) without a cancellation fee. You may also return your phone to T-Mobile within this same time period for a refund. Other restrictions apply, please see Section 5 of the T-Mobile Terms and Conditions for a full text of the Cancellation and Return Policy.
- We are required to use the residential or business street address you provided, which must be within our licensed service area, to determine certain taxes and fees. If you give us an address (such as a PO box) that is not a recognized street address, you will be assigned a default location for tax and fee calculation, which may result in a higher or lower charge for taxes and fees.

INITIAL TERM 12 MONTHS

EARLY CANCELLATION FEE PER LINE OF SERVICE

# ALERT

## CELLULAR, LLC

Visalia Mall #2  
2031 South Mooney Blvd  
Space #5528  
Visalia, CA 93277  
1-800-718-1755

INVOICE # 1034253

NAME: RUSSELL BRADBERRY

HOME PHONE: 5597397284

ADDRESS: 3284 PEPPERGRASS DR

CITY: SAN DIEGO STATE: CA

PLAN CODE: T-CLASS CUSTOMERS

ITEM#

WORK PHONE:

DATE: 11/02/05

SALES PERSON: HERRERA, MARY

SALES ID #: 3954

ZIP: 9891

CC AUTH #: 011379

INVENTORY LOCATION: 397

DEPARTMENT: VISALIA2

DESCRIPTION

PLAN

CELL #

ESN /IMEI

UNIT PRICE

TOTAL

1 CONVERSION ACTIVATION ONLY - CONVERSION  
1 T-CLASS T-CLASS ACT FEE (NONREFUNDABLE)

T-CLASS 8194468894

20.00 75.00 20.00 75.00

### CUSTOMER HELP SURVEY

- You have seen the essential coverage map and the salesperson verified that there is coverage in your area
- Your Verizon can be set by pressing 123 send for T-Mobile and 98 send for Verizon
- You can reach your provider by dialing 611 for T-Mobile or 611 for Verizon
- Your first bill will include a one-time activation fee of \$ and your bill cycle will start on the of month. Your first bill will include a prorated amount of \$ for your first month of service.
- JACCEP / DECLINE (Circle One) GWG Protection Program and they understand my coverage. Coverage begins the 31st day and is valid for 1 year from purchase date. Any change or my service needs to be reported to wireless provider and to GWG.
- Unreported changes to handset will void coverage. GWG claim # is 1-888-980-8881.
- You can check your up-to-date minutes by dialing 8646 (T-Mobile) or 8649 (Verizon)
- You can check your additional features added to your account and your representative has shown you how they work (Internet, text messaging, etc.)
- The salesperson has explained to you the year agreement
- Your salesperson's name and number is

### TERMS AND CONDITIONS OF SALE

- DEFECTIVE HANDSETS - Alert will exchange manufacture defective handset under 14 days over the counter. The returned phone must be complete with box, battery, charger, instruction manual. Anytime after 14 days the carrier will repair or replace the handset through the mail. Alert employees are happy to assist with replacement arrangements.
- RETURN POLICY: Alert's return policy is 14 days for T-Mobile Phones and Service (30 days for CA) and 3 days for Verizon Phones and Service. All returns must include original box, instruction manual, battery, homecharger and original invoice. Accessories are non-refundable.
- REFUNDS may take 4-6 weeks to process.
- SECONDARY AGREEMENT - I understand the phone sold to me is a discounted price was based on the year contract I signed with the carrier. I authorize my credit card to be charged \$350 per line if I terminate this contract for any reason prior to the contract expiration date.

SUBTOTAL 95.00  
TAX 0.00  
Exchange Credit  
TOTAL 95.00

FORM